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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/520,961

10/25/2005

Olivier Carli

07163

4903

23338 7590 02/13/2009  
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EXAMINER

WOODALL, NICHOLAS W

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

02/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,961	<b>Applicant(s)</b> CARLI, OLIVIER	
	<b>Examiner</b> Nicholas Woodall	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/13/2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites, "...leading, when a rotational force is exerted along the bone anchoring element or the threaded shaft, to a rotational locking between the bone anchoring element and the threaded shaft, ...". The language is unclear and fails to distinctly claim the subject matter of the invention. The examiner will interpret the language as ...capable of rotationally locking the elements relative to one another... for examination purposes.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Mullane (U.S. Patent 5,628,740).

Mullane discloses a device comprising a bone anchoring element (12) provided with a head (28) that includes a threaded clamping means (24), a threaded shaft (20) received within the head of the bone anchoring element, wherein the bone anchoring element and the threaded shaft include a spherical articulation between them, and a rotational linkage means (elements 34 and the complementary grooves in the clamping means) between the bone anchoring element and the threaded shaft, wherein the rotational linkage means includes a female geometrical form having a non-circular transverse cross-section on the threaded shaft and a male geometrical form having a non-circular cross-section on the bone anchoring element that allow multiple orientations between the threaded shaft and the bone anchoring element and rotationally locks the elements relative to each other. The female form have a non-circular cross-section as shown in Figure 4 of the reference and the male form has a rectangular cross-section along its length and the forms allow for the threaded shaft to be oriented relative to the anchor while preventing relative rotation between the elements. The rotational linkage means are provided separately of the spherical

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articulation as clearly shown in the Figures of the reference. Mullane further discloses the device wherein the head of the bone anchoring element may form a grip nut for a tool (see Figure 6 of the reference).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, and 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernhardt (U.S. Patent 5,591,166) in view of Altarac (U.S. Publication 2003/0163133).

Bernhardt discloses a device comprising a bone anchoring element (20) and a threaded shaft (22). The bone anchoring element is providing with a head that receives the threaded shaft and a threaded clamping means (48), wherein the threaded shaft and the bone anchoring element include a spherical articulation between the elements allowing multiple orientations of the elements relative to one another. Bernhardt fails to disclose the device further comprising a rotational linkage means between the bone anchor and the threaded shaft. Altarac teaches a device comprising a bone anchor (12') having a socket with a concave shape, a threaded shaft (20) having a ball with a convex shape, a spherical articulation between the bone anchor and the threaded shaft, and a rotational linkage means (70, 72, and 74) located between the bone anchoring element and the threaded shaft separate from the spherical articulation comprising a male

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component (74) made from the bone anchoring element having a non-circular transverse cross-section at a transverse end face and a female component (70) for receiving the male component at the transverse end face in order to rotationally lock the elements relative to each other during installation of the device (column 2 paragraph 21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Bernhardt further comprising a rotational linkage in view of Altarac in order to rotationally lock the elements relative to each other during installation of the device.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection. The examiner has provided new grounds of rejection as necessitated by the amendments.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/  
Examiner, Art Unit 3775  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733